Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-390

CITY OF ANNISTON, ALABAMA, et al.,
Petitioners,

versus

MACK SCOTT, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY BRIEF

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October 12, 1979

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The petitioners emphatically deny the statement set forth on page 4 of the respondents' brief in opposition that the issue of the defense of a bona fide merit system was raised for the first time in a Petition for Rehearing to the Court of Appeals. Said statement is not correct.

Said issue was raised on pages 1, 23, 26 and 27 of the petitioners' brief filed in the United States Court of Appeals for the Fifth Circuit in September, 1977, being Case No. 77-1979 therein. Said issue was raised again on pages 1, 2 and 3 of a letter written by petitioners' counsel (the undersigned) dated January 23, 1979, to Honorable Edward W. Wadsworth, Clerk of said Court of Appeals. Also, said issue was raised in oral argument by petitioners' counsel before said Court of Appeals on March 8, 1979. Said Court of Appeals rendered its judgment on June 25, 1979.

There is no procedure whereby the petitioners may require said Court of Appeals to treat said issue other than to seek the aid of the Supreme Court.

Said issue was not raised in the District Court for the reason the Supreme Court decided the case (*United Air Lines, Inc., v. Evans*, 431 U.S. 553, 52 L.Ed.2d 571, 97 S.Ct. 1885) upon which the petitioners initially relied on May 31, 1977, after the District Court rendered its final judgment on March 31, 1977.

Respectfully submitted,

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PROOF OF SERVICE

We, Richard B. Emerson and John R. Phillips, counsel for the petitioners and members of the Bar of the Supreme Court of the United States, hereby certify that we have served three copies of the foregoing reply brief on Honorable George C. Longshore, counsel for respondents in this proceeding, by depositing said three copies in a United States post office, with first class postage prepaid, addressed to him at 409 North 21st Street, Birmingham, Alabama 35203, his post office address. We further certify that all parties required to be served have been served.

This the ____ day of October, 1979.

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